



The Scottish
Government
Riaghaltas na h-Alba

CIRCULAR

4

2013

PLANNING APPEALS

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circular

Scottish Planning Series

PLANNING CIRCULAR 4/2013

PLANNING APPEALS

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Planning Series:

National Planning Framework (NPF) is the Scottish Government's strategy for Scotland's long term spatial development.

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PLANNING APPEALS**

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INTRODUCTION

1. This circular covers the requirements of the Town and Country Planning (Appeals) (Scotland) Regulations 2013 – SSI 2013/156 (The 2013 Regulations)¹. These bring together amendments made previously to the 2008 version of these regulations and make a number of further amendments. The 2013 Regulations came into force on 30 June 2013.
2. The 2013 Regulations set out the detailed statutory requirements for appeals within the framework of the primary legislation contained in the Town and Country Planning (Scotland) Act 1997 as amended² (the 1997 Act) and the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 as amended³ (The Listed Buildings Act). They also set out the procedures for dealing with applications called in for determination by Scottish Ministers under these Acts.
3. The planning system should operate in support of the Government's central purpose of creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. For decision-making this means providing greater certainty of process, including being timely and transparent, as a means to achieve better places for Scotland. Scottish Planning Policy outlines both general planning and subject policy considerations to be given due account in decision-making. The appeal process, as explained in this circular, is intended to ensure that examination procedures are proportionate and efficient; that the appeal process is transparent and fair; and that decisions are both robust and based upon a review of the proposals that were originally considered by the planning authority.
4. Appeals to Scottish Ministers are processed on their behalf by the Directorate for Planning and Environmental Appeals (DPEA). References to submitting appeals, documents or responses to Scottish Ministers or the appointed person should be read as submitting them to DPEA at:

Directorate for Planning and Environmental Appeals
4 The Courtyard
Callendar Business Park
Callendar Road
FALKIRK
FK1 1XR

E-mail: DPEA@scotland.gsi.gov.uk

Telephone: 01324 696 400

¹ <http://www.legislation.gov.uk/ssi/2013/156/contents/made>

² <http://www.legislation.gov.uk/ukpga/1997/8/contents> The changes to the 1997 Act with regard to appeals were made by the Planning etc. (Scotland) Act 2006.

³ <http://www.legislation.gov.uk/ukpga/1997/9/contents>

THE CHANGES

Consolidation

5. The 2013 Regulations include a number of changes made previously to the Town and Country Planning (Appeals) (Scotland) Regulations 2008 (the 2008 Regulations), namely:
 - modifications for appeals relating to planning obligations and good neighbour agreements;
 - the inclusion of procedures for listed building consent and conservation area consent cases; and
 - minor changes to requirements (e.g. include copies of decision notices with an appeal, allow for no further procedure as an option for parties) and textual changes.
6. Regulation 34(1) of and schedule 5 to the 2013 Regulations revoke the 2008 Regulations and the provisions of statutory instruments which amended the 2008 Regulations.

Changes made by the 2013 Regulations

7. In addition to the above, the 2013 Regulations:
 - include provisions for appeals to Ministers and applications called-in by Ministers for determination under the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 as amended (the 1984 Regulations);
 - amend regulation 9 on further procedure to allow appointed persons discretion to, for example, require additional information of a non-controversial nature without initiating all of the requirements on circulating it for comments;
 - include an “opt-in” procedure for use, primarily, in cases with large numbers of representations;
 - amend the definition of a hearing statement so that the requirement is that it “fully sets out” the case to be made at the hearing rather than “outlines” the case to be made at a hearing;
 - amend Rule 4(b)(ii) in both the Hearing Session Rules and Inquiry Session Rules with regard to the list of regulations which already require information on appeals to be made available to the public;
 - include national security provisions – to allow the processing of cases involving security sensitive information which cannot be made generally available to the public on grounds of national security; and
 - apply certain of the regulations to applications for planning permission for urgent Crown development made directly to Ministers under section 242A of the 1997 Act.

SCOPE OF THE REGULATIONS

8. Certain planning applications have a right to a review by the planning authority instead of a right of appeal to Scottish Ministers, and the 2013 Regulations do not generally apply to such cases. The right to a review applies where applications for planning permission⁴ for local development⁵, or applications for consent, approval or agreement required by a condition attached to such permission, are delegated to an appointed officer for decision. Applications for review are conducted by the local review body of the planning authority and there is no right of appeal to Scottish Ministers against their decision.
9. Where a review is sought on the grounds that the appointed officer has not issued a decision on the application within the period allowed and the local review body of the planning authority fails to issue a decision within three months, the application is automatically refused planning permission. In this situation the applicant has a right of appeal to Scottish Ministers and may do so within three months. The 2013 Regulations would apply to such an appeal.
10. The requirements in relation to reviews are contained in the 1997 Act and the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013 (SSI 2013/157)⁶. Further information can be found in Circular 5/2013 on Schemes of Delegation and Local Reviews.
11. Where such applications for local development are not so delegated for decision, then the applicant has a right of appeal to Scottish Ministers, as they do in relation to major developments and national developments.
12. The 2013 Regulations and this circular apply to appeals in relation to the following:

The Town and Country Planning (Scotland) Act 1997

- decisions on planning applications, or the failure to take such decisions (section 47 - including those appeals recalled for a decision by Scottish Ministers);
- refusal or the failure to take a decision on an application for the modification or discharge of planning obligations (section 75B);
- refusal or the failure to take a decision on an application for the modification or discharge of good neighbour agreements (section 75F);
- enforcement Notices (section 130);

⁴ References to planning permission include planning permission in principle unless separate provision is mentioned for the latter.

⁵ Local developments are those not specified either as either a national development in the National Planning Framework or a major development in the Town and Country Planning (Hierarchy of Developments) (Scotland) Regulations 2009 (SSI 2009/51)

<http://www.legislation.gov.uk/ssi/2009/51/contents/made>

⁶ <http://www.legislation.gov.uk/ssi/2013/157/contents/made>

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- refusal of certificates of lawful use or development or failure to determine an application in this regard (section 154);
- notices requiring replacement of trees (section 169); and
- amenity Notices (section 180).

The Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997

- decisions on applications for listed building consent or the failure to take such decisions (section 18);
- decisions on applications for the variation or discharge of conditions on listed building consent or the failure to take a decision (section 18 applied by section 17);
- decisions on applications for conservation area consent, or the failure to take such decisions (section 18 as applied by section 66); and
- enforcement notices in relation to listed building consent (section 35) and conservation area consent (section 35 as applied by section 66).

The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984

- decisions on applications for advertisement consent or the failure to take a decision (section 47 of the 1997 Act as applied by regulation 21 of the 1984 Regulations);
- discontinuance Notices (section 47 of the 1997 Act as applied by regulation 21 of the 1984 Regulations); and
- enforcement Notices (section 130 of the 1997 Act as applied by regulation 25 of the 1984 Regulations).

Applications called-in for determination by Scottish Ministers

13. The 2013 Regulations also set the relevant processes for handling applications called-in from planning authorities for decision by Scottish Ministers under section 46 of the 1997 Act and section 11 of the Listed Buildings Act.

Other cases

14. There remain certain cases within the wider planning regime where the 2013 Regulations do not yet apply. For example, the right to be heard remains in relation to appeals and called-in applications for hazardous substances consent under the Planning (Hazardous Substances) (Scotland) Act 1997. Such cases are dealt with under the Town and Country Planning (Inquiries procedure) (Scotland) Rules 1997 (SI 1997/796) or Annex F of Circular 17/1998. The principles underpinning the 2013 Regulations will be applied wherever possible.

PLANNING APPEAL PROCESS

15. This section describes the appeal process with regard to applications for planning permission and for approval, consent or agreement required by a condition attached to a planning permission. Subsequent sections describe how this process is applied with any modifications in relation to appeals in other types of case and applications called-in for determination by Scottish Ministers to which the 2013 Regulations apply.

Notice of appeal

16. An appeal to Scottish Ministers against a decision on a planning application (or a failure to make a decision) needs to be made in writing. Regulation 3 requires the notice to be given in a form obtained from Scottish Ministers. Appeals may be submitted online; forms and guidance for doing so are available at www.eplanning.scotland.gov.uk.
17. The notice of appeal needs to be served within a period of three months beginning with the date of the decision notice or, in the case of an appeal against non-determination, beginning with the date of expiry of the period allowed for determining the application. For example, if the date of the planning authority's decision notice were 1 September, an appeal would have to be received by DPEA on or before 30 November. An appeal submitted on 1 December would be out of time and not accepted. If the period within which the planning authority had to make a decision expired on 17 March, without one being issued, an appeal on the grounds of failure to determine would need to be made by 16 June. There is no discretion to accept late appeals⁷.
18. The period allowed for determining an application is specified in regulation 3(2). With applications for planning permission for major or national development or where environmental impact assessment is required, the period allowed for determination is four months. With any other application for planning permission or for approval, agreement or consent required by a condition attached to a planning permission, the period is two months. Where the applicant and planning authority agree in writing to an extension to these statutory periods, such extended period counts as the period allowed for determination.
19. Regulation 3 sets out what is required to accompany a notice of appeal to Scottish Ministers. The notice of appeal must include the following information:
- the name and address of the appellant;
 - the date and reference number of the relevant planning application;
 - the name and address of any representative of the appellant for correspondence purposes;

⁷ Not appealing on the grounds of non-determination does not affect the applicant's right to appeal against the planning authority's eventual decision on the application.

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- a statement setting out full particulars of the appeal including a note of what matters the appellant considers should be taken into account in determining the appeal and by which procedure (or combination of procedures) the appellant would prefer the appeal to be conducted; and
 - where the appeal is against the planning authority's decision, a copy of the decision notice.
20. The appeal form provided by the Scottish Government will prompt the provision of all of this information. While DPEA will request any missing information, if the statutorily required information is not submitted within the period for making the appeal, the appeal will not be accepted.
21. Regulation 3(5) specifies that all matters that the appellant intends to raise in the appeal must be set out in the notice of appeal (on a form obtained from Scottish Ministers) or in the accompanying documents. All documents, including a copy of the planning application and all accompanying certification and copies of plans submitted to the planning authority and any other evidence that the appellant intends to use to support his or her case must also accompany the notice of appeal.
22. Section 47A restricts the ability of parties to introduce new matters at the appeal stage unless they are material to the determination of the case. The restriction on raising new matters on appeal does not prevent the submission of new documents, material or evidence on issues that were before the planning authority.
23. Section 47A applies only in relation to appeals under section 47(1) against refusal or a grant with conditions in relation to applications for:
- planning permission;
 - consent, agreement or approval required by a condition attached to a planning permission;
 - approval required under a development order;
 - consent to display advertisements; and
 - consent, agreement or approval required by a condition on a consent to display advertisements.
24. Regulation 3(6) makes clear that the appellant may only raise additional matters or submit further documents, materials or evidence in accordance with and to the extent permitted by the 2013 Regulations. That is, in accordance with:
- regulation 4(3), in commenting on the planning authority's response to the appeal;
 - regulation 5(6), in commenting on the interested parties' responses to the appeal;
 - regulation 11, where the appointed person seeks further written submissions;
 - the Hearing Session Rules; or
 - the Inquiry Session Rules.

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25. These requirements are intended to ensure that the relevant matters and items of information are provided efficiently at the start of the appeal process, rather than at varying points throughout the process.
26. Section 32A of the 1997 Act specifies that an application is not to be varied after an appeal has been made. This provides clarity about the extent to which the appeal process should focus on the proposal that was considered by the planning authority. Where an applicant considers that it would be beneficial to revise a proposal, a new planning application should be submitted for consideration by the planning authority.

Intimation to the planning authority

27. At the same time that the appellant gives notice of appeal to Scottish Ministers, the appellant must also inform the planning authority. Regulation 4 requires that the appellant sends to the planning authority a copy of the notice of appeal and a list of all documents, materials and evidence which the appellant intends to rely upon and which accompanied the notice of appeal. There is no need for the appellant to send the planning authority copies of documents that the appellant has already submitted to that authority. The appellant must, however, also send to the planning authority a copy of any documents, materials and evidence which had not already been provided to the planning authority while it had been considering the application.

Planning authority response

28. Having received the notice of appeal from the appellant, regulation 4(2) requires the planning authority to provide a response within 21 days, beginning with the date of receipt. It is important that authorities meet this deadline as any delay at this stage has a particularly detrimental effect on the running of the appeal as a whole. The planning authority should send to Scottish Ministers and the appellant:
 - a note of the matters that the planning authority considers should be taken into account in determining the appeal and by what procedure (or combination of procedures) the authority thinks these should be examined;
 - a copy of the documents (other than those specified by the appellant in his or her list of documents, materials and evidence) which were taken into consideration by the planning authority in making its decision;
 - a copy of any Report on Handling of the planning application; and
 - the conditions that the planning authority consider should be imposed in the event that planning permission is granted.

The DPEA provide a form to assist the drafting of this submission. The form is available at:

<http://www.scotland.gov.uk/Topics/Built-Environment/planning/Appeals/appealformsguidancenotes>

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29. Regulation 4(3) allows that, having received the planning authority's response, the appellant can, within 14 days beginning with the date of receipt, send to Scottish Ministers and to the planning authority any comments on matters raised by the planning authority which had not previously been addressed in the decision notice. At the same time, the appellant can also provide any further documents or other evidence in support of those additional comments. Planning authorities are expected to provide full reasons in their decision notice and so this provision should not normally be needed. This is not intended to be a chance for appellants to add to their response to issues raised in the decision notice.
30. Under the terms of the 2013 Regulations, no additional response will routinely be sought from the planning authority; although the appointed person may specifically request further submissions from the appellant, planning authority and any other specified party through a subsequent procedure notice (see paragraphs 36 to 56).

Notification to interested parties

31. Regulation 5 requires planning authorities to give interested parties notice of the appeal within 14 days of the authority being notified of the appeal. "Interested parties" are any statutory consultees or any other persons who made representations to the planning authority during the authority's consideration of the planning application, which were not subsequently withdrawn. Interested parties should be advised of where the notice of appeal can be inspected, and also that the representations they previously made will be sent to Scottish Ministers and the appellant by the planning authority.
32. As representations previously made and lodged with the planning authority by interested parties will be taken into account before a decision is reached on the appeal, there is no need or expectation for the same matters to be raised again with Scottish Ministers. Nevertheless, regulation 5(4) allows that interested parties may make further representations to Scottish Ministers in respect of the appeal within 14 days beginning with the date notice is given of the appeal. In turn, the 2013 Regulations require Scottish Ministers to send a copy of any representations received by them to the appellant and to the planning authority, each of whom are provided with an opportunity to respond within a specified period, being not less than 14 days after the copies were sent.
33. The planning authority are to make all the relevant appeal papers available for inspection and for copying at an office of the planning authority (regulation 6). The legislation does not rule out electronic provision in this regard; however, it must be possible to view the information effectively.

Deadlines for provision of statements and other evidence

34. As noted above, the 2013 Regulations set a number of statutory deadlines for the provision of:

- the planning authority's response to the appeal (21 days);
- the appellant's further comments (14 days);
- the planning authority's notification to interested parties (14 days);
- further representations from interested parties (14 days); and
- the appellant's and planning authority's comments on representations from interested parties (specified date, not less than 14 days).

In the interests of efficiency in decision-making, the Scottish Government expects parties to provide this information at the earliest opportunity.

Matters which may be raised in an appeal

35. See paragraphs 21 to 25 on limitations under section 47A and regulation 3 on the introduction of new matters (i.e. issues relevant to the decision) and of documents, materials or evidence in relation to new matters or those matters which were before the planning authority.

Procedure for determination

36. Once the exchange of information set out in the paragraphs above has been completed, and where the person appointed to decide the appeal has sufficient information to make a decision, regulation 7 allows the decision to be made, without there being any further procedure or information gathering. It is at the appointed person's discretion whether further procedure is needed. For example, a request by the appellant or the planning authority for a hearing session or an inquiry session does not mean that such a session would be arranged.

Further evidence

37. However, if the appointed person decides that further information or additional representations are required to enable him or her to determine the appeal, the appointed person may do this by one of, or by a combination of, the procedures set out in regulation 9 (further written submissions, hearing sessions, inquiry sessions or a site inspection). The appointed person will identify each of the matters on which further information is needed, and also the procedure to be used to obtain it. This will be clearly set out to the parties involved in what the regulations refer to as a "procedure notice".

Opt-in notice

38. Where further information is required, regulation 8 allows the appointed person to write to interested parties seeking their confirmation that they wish to be involved in the further processing of the case (e.g. hearing or inquiry sessions). Interested parties will be given a specified period (being at least 14

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days from when notice is given) within which to give confirmation, otherwise they may lose the opportunity to be involved. In any event, their original representation will still be given due consideration and they will be informed of the decision on the appeal in due course.

39. The intention is that this “opt-in” procedure would be used in those cases where there are a significant number of interested parties; for example, where a large number of representations had been made by petition or by standard letter. The aim is to identify those interested parties who wish to play an active role in any further procedure in the appeal and to avoid repeatedly sending information about the progress of an appeal to people who, though they may be interested in the case and want their original views to be considered, do not want to be involved in any further appeal procedure.

Site inspections

40. The appointed person may, at any stage of an appeal, decide to carry out an inspection of the appeal site. Regulation 12 sets out details about site inspections. These may be either unaccompanied or accompanied. Where the appointed person intends to make an unaccompanied inspection of the site they will inform the appellant and the planning authority. If, for any reason, the appointed person considers that an accompanied site inspection would be appropriate, then the appellant, the planning authority and all interested parties (subject to any “opt-in” procedure – see paragraphs 38 and 39) will be informed of the arrangements, including the date and time. The appointed person is not obliged to defer the site inspection if any of the parties or interested persons are not present or available on the set date.
41. The purpose of the site inspection, even if accompanied, is to allow the appointed person to see the site and is not an opportunity for parties to discuss with him or her the merits of the case.

Pre-examination meetings

42. In some instances it will be helpful for the appointed person to hold a pre-examination meeting to consider how the appeal or a particular stage of it can best be conducted efficiently and expeditiously. Regulation 10 provides a procedure for this and for involving the appellant, the planning authority and the interested parties (subject to any “opt-in” procedure – see paragraphs 38 and 39). The arrangements for holding and giving notice of such a meeting and for deciding the matters to be discussed are for the appointed person to determine. It is likely that pre-examination meetings will only be required in a small number of complex cases.

Written submissions

43. Regulation 11 sets out the procedure for seeking further written submissions on an appeal. The appointed person is free to seek additional representations or information from the appellant, the planning authority or from any other body or person. The procedure notice will set out what information is required

and by what date and will provide details of those who have been requested to provide the additional information.

44. Parties providing such further information (a procedure notice response) to the appointed person should at the same time send copies to all parties specified in the procedure notice, including the appellant and the planning authority. All of these parties then have an opportunity to send comments on a procedure notice response to the appointed person within 14 days from the date they received it, again providing copies to the appellant, planning authority and others specified in the procedure notice. The timetables for the provision of this information must be observed; late submissions might not be taken into consideration in the final decision.

Hearing sessions

45. Schedule 1 to the 2013 Regulations sets out the Hearing Session Rules. These provide the appointed person with scope to determine what procedure should be followed at a hearing on the specified matters or topics that are set out in the procedure notice. The hearing is intended to take the form of a discussion led by the appointed person. Formal cross-examination of participants will not be allowed. While the rules provide discretion for the procedure the appointed person thinks appropriate to follow during the hearing, they also provide a framework to ensure that the relevant parties have clear notice of the hearing session, the other participants in the process and clarity about the issues and evidence to be considered.
46. Where the appointed person intends to hold a hearing session, he or she must give written notice to the appellant, to the planning authority and to those parties who made representations on the specified matters (subject to any “opt-in” procedure – see paragraphs 38 and 39). Any party intending to participate in the hearing session must inform the appointed person within 14 days of the date of the notice as set out in rule 2. Only those matters specified in the procedure notice will be considered at the hearing: consequently, only those who made related representations are required to be given notice of the hearing. The appointed person may also give notice to any other body or person who is to provide further representations on the specified matters.
47. It is for the appointed person to give those entitled to appear notification of when and where the hearing is to take place, and to give whatever notice he or she considers to be reasonable in the circumstances (rule 3). Those who are entitled to appear at a hearing session may be required to send a hearing statement and any supporting documents to the other parties entitled to appear at the hearing and to the appointed person (rule 4). This will not be required in every case and will be for the appointed person to determine. Rule 4(5) confirms a hearing statement to be a written statement which fully sets out the case relating to the specified matters on which the appointed person has sought information in the procedure notice, together with a list of supporting documents to be relied upon and a list of any persons who are to speak at the hearing session, including the matters to be covered by each

person and their relevant qualifications. The rules are intended to ensure that all parties are clear on the issues and evidence to be considered at the hearing session.

48. At the start of the hearing session, the appointed person is to explain the procedure that they intend to adopt, taking into account submissions made by any of the parties entitled to appear. Parties may be represented or, where two or more persons have a similar interest, one or more may appear for the benefit of some or all. The appointed person may proceed with the hearing in the absence of anyone entitled to appear.

Inquiry sessions

49. Schedule 2 to the 2013 Regulations sets out Inquiry Session Rules. In common with the procedure for hearing sessions, the inquiry sessions will examine only those matters specified in the procedure notice issued under rule 1. The parties entitled to appear at inquiry sessions will be:
- the appellant;
 - the planning authority;
 - any interested party who made representations in relation to specified matters; and
 - those who the appointed person wishes to make representations on the specified matters.
50. Those provided with written notice of the inquiry session by the appointed person must confirm their intention to attend the session within 14 days of the date of the notice.
51. Rule 3 requires the appointed person to provide such notice of the date, time and place fixed for holding the inquiry session as he or she considers reasonable to those parties entitled to appear at the inquiry session. However he or she may also require the planning authority to take one or more of the following additional steps to publicise the inquiry session:
- publish notices in a local newspaper and on a website not less than 14 days before the inquiry session; or
 - serve notice of the inquiry session in a form and on such parties as the appointed person specifies.
52. Where required to by notice from the appointed person, those entitled to appear at the inquiry session need to provide copies of an inquiry statement to the appointed person and to the appellant and planning authority. This should set out the particulars of the case relating to the specified matters, a list of documents to be relied upon, and a list of any persons who are to speak at the inquiry session including the matters to be covered by each person and their relevant qualifications. The appointed person will provide those entitled to appear at the inquiry session with details of when information should be submitted.

53. The appointed person's notice will also specify the date by which the documents listed in the inquiry statement must be submitted to the appointed person and to the appellant, planning authority and other persons entitled to appear at the inquiry session. It will also specify the date for submission of precognitions setting out the evidence to be given by the witnesses listed in the inquiry statement. The Inquiry Session Rules require that precognitions should not exceed 2,000 words in length.
54. The rules provide the appointed person with scope to determine the procedure at the inquiry session but he or she is to state at commencement of the session what the procedure will be, taking account of submissions from those entitled to appear. The rules require the appointed person to explain the order in which specified matters are to be considered and the order in which those entitled to appear are to be heard. Parties may be represented or, where two or more persons have a similar interest, one or more may appear for the benefit of some or all.
55. Those entitled to appear at an inquiry session may call evidence, cross-examine witnesses and make closing statements. However, the appointed person can refuse to permit this wherever he or she considers that to be irrelevant or repetitious.

New evidence

56. Where, following conclusion of any further procedure, such as a hearing session or inquiry session, the appointed person intends to take into account new evidence, the 2013 Regulations require him or her to give the appellant, the planning authority and other relevant parties described in the 2013 Regulations an opportunity to make representations on the new evidence before a decision can be made on the appeal. Regulation 13 defines "relevant party". Where new evidence relates to a specified matter which was the subject of a hearing or inquiry session, everyone entitled to appear at that session is a relevant party. Where new evidence relates to a matter on which further written representations or information was sought by a procedure notice under regulation 11, a relevant party is anyone to whom the procedure notice was sent.

APPEALS AGAINST ENFORCEMENT NOTICES, TREE REPLACEMENT NOTICES AND AMENITY NOTICES UNDER THE 1997 ACT AND ENFORCEMENT NOTICES UNDER THE LISTED BUILDINGS ACT

57. Part 4 of the 2013 Regulations provides (under regulations 14-16) some detailed procedural requirements for appeals against:
 - enforcement notices⁸ (section 130 of the 1997 Act - including as applied by the 1984 Regulations);
 - tree replacement notices (section 169 of the 1997 Act);

⁸ The Planning etc. (Scotland) Act 2006 removed the ground of appeal against an enforcement notice that planning permission should be granted or the relevant condition or limitation be discharged.

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- amenity notices (section 180 of the 1997 Act); and
- enforcement notices (section 35(2) of the Listed Buildings Act),

which are different from the processes for considering planning application appeals described above.

58. The 2013 Regulations supplement the provisions in the 1997 Act and the Listed Buildings Act: setting out the procedure for providing information in support of these appeals, exchanging relevant information and informing other parties in a way that is consistent with the provisions for planning application appeals.
59. Appeals in these cases must be made before the date (specified in the notice) on which the notice takes effect.

Statement of appeal

60. The 1997 Act and the Listed Buildings Act require that a statement should be provided by an appellant specifying the grounds of appeal and providing such other information as may be prescribed. Regulation 14 requires that the statement should include the following information, consistent with the approach for planning permission appeals:
- all matters which the appellant intends to raise in the appeal;
 - the name and address of the appellant;
 - a copy of the notice against which the appeal is made;
 - the name and address of any representative of the appellant for correspondence purposes; and
 - a note of what matters the appellant considers require determination and by what procedure they should be examined.
61. The statement is to be accompanied by copies of all documents, materials and evidence which the appellant intends to rely upon in the appeal and these should make the appellant's full case. Regulation 14(5) specifies that the appellant may only raise additional matters (i.e. new issues) to those set out in the statement of appeal and accompanying documents either:
- in response to particular matters raised by the planning authority (regulation 15); or
 - where further information or evidence is specifically requested by the appointed person (whether through written submissions (regulation 11), hearing sessions or inquiry sessions).

Intimation to the planning authority and response

62. At the same time as giving notice of appeal to Scottish Ministers, regulation 15 requires the appellant to send to the planning authority a copy of the notice of appeal, the statement of appeal and all supporting documents, materials and evidence to be used to support his or her case. The planning authority has a

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period of 21 days, beginning with the date of receipt of this information, within which it must provide its response to Scottish Ministers and the appellant.

63. The authority's response is to take the form of a statement incorporating a response to each ground of appeal, stating the matters that the planning authority consider require determination and by what procedure the authority wish the appeal to be conducted. The planning authority must also send to the appellant and to Scottish Ministers copies of all documents that were before them and taken into account in reaching the decision to issue the notice which is the subject of the appeal.
64. The appellant is entitled to send to Scottish Ministers and the planning authority comments on the planning authority's response. This must be done within 14 days, beginning with the date of receipt of the planning authority's response. Regulation 15(4) requires that the planning authority is to make copies of the appeal papers available for inspection at an office of the planning authority. The legislation does not rule out electronic provision in this regard; however, it must be possible to view the information effectively.

Notification to other parties

65. Regulation 16 requires that the planning authority must give notice of the appeal to each person, other than the appellant, on whom the original enforcement, amenity or tree replacement notice was served. This is to be done no later than 14 days following notification of the appeal. This notice of the appeal is to set out the following information:
 - the name of the appellant and the address of the land which is the subject of the appeal;
 - the steps required by the notice;
 - that representations can be made to Scottish Ministers; and
 - an explanation of how and when these can be made and where a copy of the notice of appeal can be inspected.
66. The period allowed for making responses is to be no less than 14 days from the date on which notice is given by the planning authority.
67. Parts 1, 3, 9 (except regulation 29 – see paragraph 101) and 10 of the 2013 Regulations and the schedules containing Hearing Session and Inquiry Session Rules apply to these appeals in the same way as they do to planning permission appeals.

APPEALS AGAINST DECISIONS OR THE FAILURE TO TAKE DECISIONS UNDER THE LISTED BUILDINGS ACT (SECTION 18)

68. Part 5 (regulations 17 and 18) of the 2013 Regulations relate to appeals against:
 - a decision to refuse, or grant with conditions, listed building consent (section 18);

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- a decision to refuse, or grant with conditions, consent for the variation or discharge of conditions on listed building consent (section 18 as applied by section 17);
 - a decision to refuse, or grant with conditions, conservation area consent (section 18 as applied by section 66); and
 - the failure of the planning authority to take a decision on an application for any of the above (section 18 and that section as applied by sections 17 and 66).
69. Any appeal in relation to the above is to be served on Scottish Ministers within three months beginning with the date of the decision letter or the date of expiry of the period allowed for determination⁹ of the application.
70. Certain provisions of Part 2 of the 2013 Regulations apply to an appeal under section 18 of the Listed Buildings Act:
- regulation 3(4) to (6) on the content of notices of appeal, accompanying information and that the subsequent introduction of new matters, documents, materials or evidence can only be in relation to procedures under regulations 4, 5 and 11 and the Hearing Session and Inquiry Session Rules (see paragraphs 21 to 25 above);
 - regulation 4 on the appellant notifying the planning authority of the appeal and the planning authority's response (except in relation to regulation 4(2)(c) on Reports on Handling);
 - regulation 5 on notifying interested parties; and
 - regulation 6 on the planning authority making the appeal documents available to the public.
71. When making an appeal under section 18 of the Listed Buildings Act, the appellant must also notify the owners¹⁰ of the building to which the appeal relates (regulation 18). If the appellant is unable to identify the owners, he or she must place a notice in a local newspaper. The forms of the notice and newspaper notice are set out in schedule 3 to the 2013 Regulations.
72. The notice to owners allows them to make representations on the appeal to Scottish Ministers.
73. When submitting the appeal the applicant must certify that at the beginning of the prescribed period¹¹ either:
- that they were the only owner; or
 - that they have notified all the other owners (giving their names, addresses and the dates of notification); or

⁹ That is two months from the date of receipt by the planning authority of the application or any extension agreed upon in writing by the applicant and the planning authority.

¹⁰ In this context, the owners at the beginning of the period of 21 days which ends on the date notice of the appeal was given to Scottish Ministers.

¹¹ Being 21 days ending with the date on which notice of the appeal was given.

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- that they have been unable to notify every owner (giving the names addresses and dates of notification of those they have notified).
74. Where they have been unable to notify all of the owners, they must have taken all reasonable steps to identify the names and addresses of the owners and certify to that effect (giving details of the steps taken and giving the date and place of publication of the newspaper notice).
75. Parts 1, 3, 9 and 10 of the 2013 Regulations and the schedules containing Hearing Session and Inquiry Session Rules apply to these appeals in the same way as they do to planning permission appeals.

APPEALS IN RELATION TO THE DISPLAY OF ADVERTISEMENTS

76. The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (the 1984 Regulations) apply certain provisions of the Act to the control of advertisements. Part 6 (regulations 19-20) of the 2013 Regulations concerns appeals in relation to applications for advertisement consent and against discontinuance notices regarding advertisements. Appeals against enforcement notices served under regulation 24 of the 1984 Regulations are covered by Part 4 of the 2013 Regulations (see paragraphs 57 to 67).

Appeals relating to applications for advertisement consent

77. Regulation 19 relates to appeals against:
- the refusal of an application for advertisement consent or a grant of such consent with conditions;
 - the refusal of any application for consent, agreement or approval required by a condition on an advertisement consent or the granting of it subject to conditions; and
 - the failure to determine such applications.
78. The regulations contained in Parts 3 and 9 of the 2013 Regulations and in the Hearing Session Rules and the Inquiry Session Rules apply in such cases, as do the savings and transitional provisions and revocations in Part 10 of the 2013 Regulations (see paragraphs 106 to 108).
79. Part 2 of the 2013 Regulations (on giving notice of the appeal to Scottish Ministers, the planning authority and interested parties, the responses of the authority and interested parties to such notice and the publication of appeal documents) applies with modifications. These modifications are:
- references to “permission”, “development” and “the land to which development relates” are changed to, respectively, “consent to display advertisements”, “advertisement” and “the site where the advertisement is to be displayed”;
 - the requirement to submit a Report on Handling does not apply;

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- the time period for determining applications is two months from the date of receipt of the application by the planning authority (rather than from the “validation date” – which has a specific meaning in relation to other applications); and
- the period for making an appeal will remain six months for those applications where the right to appeal arose before 30 June 2013. For other cases the period is three months.

Appeals in relation to discontinuance notices

80. Where a planning authority serve a notice requiring the discontinuance of the display of an advertisement under regulation 14 of the 1984 Regulations, the recipient has a right of appeal to Scottish Ministers. Regulation 20 makes provision in this regard, including applying other provisions in the 2013 Regulations to such appeals.
81. A discontinuance notice will specify the period after which the notice takes effect. Notice of an appeal against it must be served on Scottish Ministers (and the planning authority) before the end of either that period, or any extension to this period made under regulation 14(5) of the 1984 Regulations.
82. The notice of appeal must contain the same information listed in paragraph 60 in relation to statements of appeal regarding enforcement notices. The notice of appeal must be accompanied by copies of all of the documents, materials and evidence which the appellant intends to rely on in the appeal.
83. Regulation 15 of the 2013 Regulations on the intimation of an appeal to the planning authority and the planning authority’s response applies in relation to discontinuance notice appeals, subject to modifications of the requirements relevant to such appeals.
84. The planning authority must give notice of the appeal to the other recipients of the discontinuance notice within 14 days following notification of the appeal by the appellant. This notice must:
 - state the name of the appellant and specify the advertisement or the site to which the appeal relates;
 - describe the steps required by the discontinuance notice;
 - state that representations may be made to Scottish Ministers and provide information as to how and by when (being not less than 14 days from the date on which notice is given) such representations may be made; and
 - state where a copy of the notice of appeal and of the planning authority’s response may be inspected.
85. As with enforcement appeals, the procedures for determining cases with or without further procedure are as set out in Parts 3 and 9 (except regulation 29 – see paragraph 101) and in the Hearing Session and Inquiry Session Rules in the 2013 Regulations.

APPEALS IN RELATION TO PLANNING OBLIGATIONS, GOOD NEIGHBOUR AGREEMENTS AND CERTIFICATES OF LAWFUL USE OR DEVELOPMENT

Appeals in relation to planning obligations

86. Where an application is made under section 75A of the 1997 Act for the modification or discharge of a planning obligation and is refused, the applicant can appeal under section 75B. The same right of appeal applies should the planning authority fail to issue a decision within two months. Regulation 21 covers such appeals.
87. Notice of appeal must be given to Scottish Ministers within three months beginning with the date of the decision notice refusing the application or, where the planning authority fail to determine the application, within three months beginning with the date of expiry of the two month period for determination of the application (see paragraph 17 on examples of when such three month periods begin and end).
88. The following provisions, in common with the processes for considering planning application appeals, apply in relation to appeals regarding planning obligations:
- regulation 3(4) to (6) on the content of notices of appeal, accompanying information and that the subsequent introduction of new matters, documents, materials or evidence can only be in relation to procedures under regulations 4, 5 and 11 and the Hearing Session and Inquiry Session rules (see paragraphs 21 to 25);
 - the same provisions for notifying the planning authority and for the response to that as set out in regulation 4 (see paragraphs 27 to 30) with the exception of the requirements for Reports on Handling and proposed planning conditions;
 - the same provisions on notifying interested parties as set out in regulation 5 (see paragraphs 31 to 33), except regulation 5(2) and (3)(c) and that the description of development is modified to refer to the obligation and the instrument within which it is contained;
 - the same provisions in regulation 6 on making appeal documents available to the public;
 - the provisions of Parts 1, 3 and 9 of the 2013 Regulations; and
 - the Hearing Session Rules and the Inquiry Session Rules.

Appeals in relation to good neighbour agreements

89. Regulation 22 deals with appeals in relation to applications to modify or discharge good neighbour agreements (section 75F of the 1997 Act). Appeals against a decision on such applications must be made within three months beginning with the date of the decision notice. Where the planning authority has not issued a decision on such an application within two months after the date the application was made, the applicant has three months, beginning with the date of expiry of the two month period, to appeal on the grounds of non-determination.

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90. The following provisions, in common with the processes for considering planning application appeals, apply in relation to appeals regarding good neighbour agreements:
- regulation 3(4) to (6) on the content of notices of appeal, accompanying information and that the subsequent introduction of new matters, documents, materials or evidence can only be in relation to procedures under regulations 4, 5 and 11 and the Hearing Session and Inquiry Session rules (see paragraphs 21 to 25);
 - the same provisions for notifying the planning authority and for the response to that as set out in regulation 4 (see paragraphs 27 to 30 above) with the exception of the requirements for Reports on Handling and proposed planning conditions;
 - the same provisions on notifying interested parties as set out in regulation 5 (see paragraphs 31 to 33), except regulation 5(2) and (3)(c) and that the description of development is modified to refer to the obligation and the good neighbour agreement within which it is contained;
 - the same provisions in regulation 6 on making appeal documents available to the public;
 - the provisions of Parts 1, 3 and 9 of the 2013 Regulations;
 - the Hearing Session Rules and the Inquiry Session Rules.

Appeals in relation to certificates of lawful use or development

91. Regulation 23 supplements the provisions in section 154 of the 1997 Act on appealing against refusal or failure to determine an application for a certificate of lawful use or development (CLUD) within the prescribed period. The regulation requires the notice of appeal to be served within three months beginning with the date of the decision or from the expiry of the period allowed for determining the application (two months beginning with the date of receipt of the application and fee or any extended period agreed upon in writing between the applicant and the planning authority).
92. The following provisions, in common with the processes for considering planning application appeals, are required in relation to a CLUD appeal:
- the same provisions for notifying Scottish Ministers of the appeal as set out in regulation 3(4) to (6) (see paragraphs 19 to 25);
 - the same provisions for notifying the planning authority and for the response to that as set out in regulation 4 (see paragraphs 27 to 30) with the exception of the provisions for reports on handling and planning conditions;
 - the same provisions in regulation 6 on making appeal documents available to the public, except in relation to the notices to interested parties and responses to these, as specified in regulation 5(1), (4) and (6), which do not apply to these appeals;
 - provisions in Parts 1, 3 and 9 (other than regulation 29 – see paragraph 101) of the 2013 Regulations; and
 - the Hearing Session Rules and the Inquiry Session Rules.

CALLED-IN APPLICATIONS AND APPLICATIONS FOR URGENT CROWN DEVELOPMENT

93. Regulation 24 confirms that the definitions set out in Part 1 of the 2013 Regulations, the procedures set out for determining appeals in Part 3, the general provisions in Part 9 as well as the Hearing Session Rules and the Inquiry Session Rules, generally apply to applications called-in for determination by Scottish Ministers (section 46 of the 1997 Act) in the same way as they do to planning application appeals under section 47. Technical modifications are made in the application of these provisions to allow for the fact that decisions will be made by Scottish Ministers rather than an appointed person.
94. Regulation 29, on the compliance with consultation and notification procedures associated with an application when it was before the planning authority (see paragraph 101), applies to a called in application as it would to an appeal in relation to the same type of application.
95. Regulation 25 relates to applications for planning permission for urgent Crown development made directly to Scottish Ministers under section 242A of the 1997 Act. The 2013 Regulations are applied along similar lines to called-in applications, although regulation 29 does not apply as no application was previously before the planning authority.

GENERAL PROVISIONS

96. Part 9 of the 2013 Regulations sets out general provisions covering a number of aspects of the procedures in the 2013 Regulations.

Non-delegated appeals

97. Regulation 26 relates to non-delegated appeals, where the decision on an appeal will be taken by Scottish Ministers rather than delegated to an appointed person. It applies the provisions in Parts 1, 3 and 9 of the 2013 Regulations and the Hearing Session and Inquiry Session Rules with the same technical amendments as in relation to called-in applications.

National security

98. Regulation 27 deals with national security. It allows that where an appellant withholds security-sensitive information on the grounds that public disclosure would not be in the national interest, that does not invalidate an appeal. The appeal must be accompanied by a written statement explaining that this is the reason for withholding the information.
99. Where the relevant Secretary of State in the UK Government or, after consultation with that Secretary of State, Scottish Ministers direct that such information should not be subject to public disclosure, the special procedures in schedule 4 on Closed Evidence will apply to the case. The Planning

(National Security Directions and Appointed Representatives) (Scotland) Rules 2006 (SSI 2006/265)¹² apply to the making of directions restricting the availability of evidence, and to the appointed representatives who can view evidence and act on behalf of parties not able to view closed evidence.

Further copies of documents

100. Regulation 28 enables the appointed person to require any party who has submitted documents, materials or evidence under the 2013 Regulations to provide him or her or other parties with such additional copies as he or she specifies. He or she may also require the planning authority to make copies of the documents, materials or evidence available for inspection at an office of the planning authority until the appeal is determined and to allow anyone reasonable opportunity to inspect the documents, and where practicable to take copies of them.

Compliance with notification and consultation procedures

101. Regulation 29 sets out, for the various types of appeal in relation to applications made to the planning authority, requirements on the appointed person to comply with any consultation and publicity requirements in relation to the application where this has not already been done by the planning authority. In cases relating to appeals against enforcement or discontinuance notices, for example, there is no application, so regulation 29 does not apply.

Appointment of assessors

102. Infrequently Scottish Ministers may appoint an assessor to sit with the appointed person at a hearing session or at an inquiry session to advise on such matters as Scottish Ministers may specify – regulation 30. Where this happens Scottish Ministers must notify every person entitled to appear at the inquiry or hearing session of the name of the assessor and of the matters that the assessor is to advise upon.

Decision notice

103. The appointed person is required by regulation 31 to give notice of the decision (the decision notice) to the appellant and to the planning authority, and to notify every person who has made and not withdrawn representations in respect of the appeal that a decision has been made and where a copy of the decision notice is available for inspection.

Electronic communication

104. Regulation 32 enables key transactions under the 2013 Regulations to be carried out electronically and to have the same effect as if they had been provided in paper copy. There are certain conditions to be met in order to facilitate this use of electronic communications:

¹² <http://www.legislation.gov.uk/ssi/2006/265/contents/made>

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- the recipients have agreed or are deemed to have agreed to receive the information electronically;
 - any person sending information electronically is to be taken to have agreed to the use of electronic communication for the purpose of the appeal; and
 - the transmitted document is capable of being accessed by the recipient, that it is legible and sufficiently permanent for subsequent reference.
105. Consent to use electronic communication can be withdrawn by parties by giving notice and this will take effect not later than seven days from that notice.

TRANSITIONAL PROVISIONS

106. Regulation 33 contains a transitional provision for appeals against decisions on, or the failure to determine, applications for advertisement consent. In bringing these cases within the modernised appeals process, the period for making an appeal in such cases is reduced to three months. The transitional provision means that where the right of appeal arose before 30 June 2013, the six month period for making an appeal will remain.
107. The period for making an appeal against a discontinuance notice is also amended so that a recipient can appeal in the period before the discontinuance notice takes effect instead of within the previously stipulated 28 day period.
108. Regulation 34 and schedule 5 set out the revocation of the previous 2008 Regulations and subsequent amendments to them which are now incorporated in the 2013 regulations. This regulation also preserves the version of the Hearing Session Rules and Inquiry Session Rules contained in the 2008 Regulations where notice of such session was issued prior to 30 June 2013. These rules have been amended slightly with regard to hearing statements and the making available of information to the public (see paragraph 7).

FURTHER COPIES AND ENQUIRIES

109. Any enquiries about the content of the Circular should be addressed to The Planning and Architecture Division, Scottish Government, 2H - South, Victoria Quay, Leith, Edinburgh, EH6 6QQ (Telephone 0131 244 7888). Copies of the circular may be obtained from the Scottish Government website at www.scotland.gov.uk/planning .



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